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NO. 82-1836

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1982

KEENE CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION OF PETITIONER KEENE CORPORATION TO CONSOLIDATE CONSIDERATION OF PETITIONS FOR CERTIORARI

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Petitioner Keene Corporation ("Keene") respectfully requests that the Court consolidate consideration of Keene's Petition for Writ of Certiorari ("Keene's Petition") with the Petition for Writ of Certiorari filed in this Court in Austin v. Unarco Industries, Inc., 705 F.2d 1 (1st Cir. 1983), petition for certiorari filed, 52 U.S.L.W. 3005 (June 28, 1983) (No. 82-2164) ("Austin"). The reasons for this request are as follows:

1. Keene's Petition was filed in this Court on May 11, 1983. The respondent United States of America (the "Government") has not yet filed any response to Keene's Petition. The Government's request for an extension until July 13, 1983 to respond to Keene's Petition was granted by the Court on June 6, 1983. The Court recently has granted the Government a second extension of time to respond until August 20, 1983.

2. As is set forth more fully in Keene's Petition, one of the bases for Keene's Petition to this Court is that there is an irreconcilable conflict among the First, Second, Fourth and Ninth Circuits as to whether admiralty jurisdiction applies to claims of injury caused by exposure to asbestos-containing products in shipyards and on vessels in navigable waters, and to third-party actions arising out of those claims. One of the cases creating this conflict was the Austin decision, decided by the First Circuit on March 20, 1983, approximately seven weeks after the Second Circuit's decision in the present action.

3. The plaintiffs in the Austin case have petitioned this Court for a writ of certiorari (the "Austin Petition") on the issue of, inter alia, the applicability of admiralty jurisdiction to claims or injury due to alleged exposure to asbestos while working on vessels in navigable waters. The Austin Petition presents to this Court issues identical to those presented in Keene's Petition.

4. In these circumstances, Keene respectfully requests that consideration of these petitions be consolidated and that both petitions be considered by the Court at the same time. Consolidation of the consideration of these

petitions will not only conserve the time of the Court, but will assure that the Court has the benefit of the views of several affected parties in determining whether to grant certiorari in these cases.

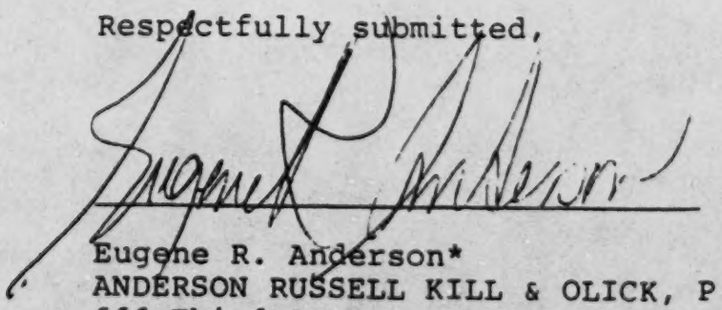
5. Keene believes that neither the respondent United States of America, the parties to the Austin Petition, nor any other party will be prejudiced if Keene's motion is granted.

6. When Keene filed its Petition on May 11, 1983, Keene simultaneously filed a motion to defer consideration of Keene's Petition until the Austin Petition was filed. Keene believes that no action on that motion was ever taken by this Court, and the motion is now mooted by the filing of the Austin Petition.

CONCLUSION

For the foregoing reasons, the Court should consolidate the consideration of Keene's Petition and the Austin Petition and consider both petitions at the same time.

Respectfully submitted,



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AFFIDAVIT OF SERVICE

District of Columbia)
) ss.:
Washington, D.C.)

LORELIE S. MASTERS, being duly sworn, deposes and says that:

1. I am a member of the Bar of the District of Columbia and one of the attorneys for Petitioner Keene Corporation. I am not a member of the Bar of this Court.

2. I have served, this 18th day of July, 1983, the accompanying Motion of Petitioner Keene Corporation to Consolidate Consideration of Petitions for Certiorari by causing three (3) copies thereof to be mailed, properly addressed and with postage prepaid, to the Solicitor General, United States Department of Justice, Washington, D.C. 20530

Lorelie S. Masters
Lorelie S. Masters

Subscribed and sworn to before me, a notary public in and for the District of Columbia, this 18th day of July, 1983.

Mary D. Shaw
Notary Public